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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 KYNTREL TREVYONE JACKSON,

9 Plaintiff,

v.

10 B. BERKEY, et al.

11 Defendants.  
12

CASE NO. C19-6101 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge, Dkt. 69, and Plaintiff Kyntrel Jackson’s objections to the R&R, Dkt. 70.

16 Jackson, a prisoner proceeding pro se and *in forma pauperis*, alleges that he has been deprived of soap in violation of his Eighth Amendment rights because he allegedly has an allergy to the only soap available to prisoners confined in the Intensive Management Unit (“IMU”) of the Stafford Creek Corrections Center (“SCCC”). Dkt. 11. He also alleges that he was retaliated against after filing a complaint asserting his medical examination for allergies was improperly conducted and that the prison’s grievance procedures violate his due process and First Amendment rights because the procedures do

1 not provide a way to validate the date upon which a grievance or response is received. *Id.*  
2 Jackson thus brings claims against the Washington State Department of Corrections  
3 (“DOC”) Secretary, Stephen Sinclair; the DOC Intensive Management Unit (“IMU”)   
4 Manager, Timothy Thrasher; SCCC Superintendent R. Haynes; two DOC headquarters  
5 Grievance Program Managers, Dale Caldwell and Ronald Frederick; SCCC medical  
6 providers ARNP Bobbie Berkey and nurses A. Johnson and K. Cresswell; SCCC Health  
7 Services Managers Keith Parris and Tim Taylor; SCCC Grievance Coordinator, Dennis  
8 Dahne; DOC Prison Rape Elimination Act (“PREA”) Coordinator, Beth Schubach; and  
9 DOC Health Services Administrator Ronna Cole.

10 In October 2020, Defendants moved for summary judgment, arguing that Jackson  
11 has failed to present evidence supporting his Eighth Amendment claim, that he has failed  
12 to state a viable claim for retaliation, and that his grievance process claims fail as a matter  
13 of law. Dkt. 35. They additionally argued, in the alternative, that they are entitled to  
14 qualified immunity. *Id.* On February 22, 2021, Judge Creatura issued the instant R&R,  
15 recommending that the Court grant Defendants’ motion for summary judgment. Dkt. 69.  
16 Judge Creatura concluded that Jackson has failed to adduce evidence of a soap allergy  
17 sufficient to show an excessive risk to his health and safety in violation of the Eighth  
18 Amendment and has failed to establish the Defendants’ personal participation in a  
19 violation of his Eighth Amendment rights. He further concluded that Jackson’s retaliation  
20 claim fails because Jackson has failed to establish any adverse action against him caused  
21 by his protected activity and that Jackson’s grievance process claims fail as a matter of  
22 law.

1 On March 23, 2021, Jackson objected to the R&R. Dkt. 70. On March 30, 2021,  
2 Defendants responded. Dkt. 73.

3 The district judge must determine de novo any part of the magistrate judge's  
4 disposition that has been properly objected to. The district judge may accept, reject, or  
5 modify the recommended disposition; receive further evidence; or return the matter to the  
6 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

7 Jackson attributes six errors to the R&R, some of which are duplicative arguments.  
8 His main objection is that the R&R failed to give enough weight to his declaration  
9 asserting that he is in fact allergic to the soap. *See* Dkt. 70 at 1–3 (Errors 1, 3, 4, 6). The  
10 Court agrees with the R&R that Jackson must come forward with some evidence that he  
11 in fact has an allergy to survive Defendants' motion for summary judgment. This could  
12 be accomplished, for example, through medical records of past allergies or through  
13 declarations of medical providers confirming an allergy. As noted by Defendants,  
14 genuine issues of material fact are not raised by conclusory or speculative allegations,  
15 like the allegations found in Jackson's declaration. *See Lujan v. Nat'l Wildlife Fed'n*, 497  
16 U.S. 871, 888–89 (1990). The R&R properly held Jackson to the summary judgment  
17 standard and required Jackson to come forward with evidence to support his claim.

18 Jackson next argues that the R&R erred in not finding a genuine dispute of  
19 material fact over whether he has a soap allergy and relies on his previous litigation over  
20 access to alternative toothpaste. *See* Dkt. 70 at 1–3 (Errors 2, 3, 6). Jackson previously  
21 sued DOC for Eighth Amendment violations arising out of his alleged allergy to the  
22 toothpaste that was provided to him while he was housed at the Monroe Correctional

1 Complex. *See Jackson v. Dep't of Corrections Washington*, 16-1856-RAJ-MAT, Dkt. 45  
2 (Feb. 22, 2018). In that case, Magistrate Judge Theiler recommended that the defendants'  
3 motion for summary judgment be denied, concluding that there were issues of material  
4 fact to support a deprivation of personal hygiene claim under *Board v. Farnham*, 394  
5 F.3d 496 (7th Cir. 2005). *Id.* at 10–11. But Judge Theiler's report and recommendation is  
6 only persuasive authority on this Court and cannot be used either to create a dispute of  
7 material fact or to establish that Defendants here acted with deliberate indifference.

8 To establish a violation of the Cruel and Unusual Punishment Clause, a prisoner  
9 must make an “‘objective showing’ that the deprivation was ‘sufficiently serious’ to form  
10 the basis for an Eighth Amendment violation.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th  
11 Cir. 2000), *cert. denied*, 532 U.S. 1065 (2001) (quoting *Wilson v. Seiter*, 501 U.S. 294,  
12 298 (1991)). Further, a prisoner must show that the defendant acted with deliberate  
13 indifference. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Defendants here have  
14 provided evidence that shows that Jackson was examined by at least five medical  
15 professionals who found no sign of a soap allergy. Dkt. 52-1 at 21–22, 35, 38, 41, 43;  
16 Dkt. 53. Indeed, the Defendants' evidence shows that medical professionals responded to  
17 Jackson's medical kites asserting an allergic reaction to soap. The Court cannot say that  
18 the Medical Defendants (i.e., Berkey, Johnson, and Creswell) acted with deliberate  
19 indifference here. Moreover, the Court agrees with the R&R's analysis about the lack of  
20 personal participation by the remaining Defendants, *see* Dkt. 69 at 13–16, and it cannot  
21 be said that they acted with deliberate indifference to amount to an Eighth Amendment  
22 violation. The Court thus agrees with the R&R that Jackson has failed to create a dispute

1 of material fact and also concludes that Jackson has failed to establish that the Defendants  
2 acted with deliberate indifference.

3 Finally, Jackson objects to the R&R's citations to specific case law. Dkt. 70 at 2–3  
4 (Error 5). He argues that *Wilhelm v. Enenmoh*, 608 F. App'x 513 (9th Cir. 2015), *Martin*  
5 *v. Morris*, No. CV 10-5232-PSG PJW, 2013 WL 4588735 (C.D. Cal. Aug. 28, 2013),  
6 *aff'd*, 586 F. App'x 358 (9th Cir. 2014), and *Parks v. McDaniel*, No. 03:06-CV-  
7 00095LRHVPC, 2007 WL 2891499 (D. Nev. Sept. 28, 2007), are inapplicable. While  
8 Jackson distinguishes the particular facts of each case from his facts, the R&R properly  
9 relied on these cases for their principles in determining whether an Eighth Amendment  
10 violation has been established for a prisoner's allergy to soap. All three cases concluded  
11 that the plaintiffs failed to establish their allergy to the prison soap or the harm the soap  
12 inflicted. *See, e.g., Martin*, 2013 WL 4588735 at \*2–3 (“Plaintiff bears the burden of  
13 establishing that he was allergic to prison soap and needed special soap to maintain his  
14 hygiene and he failed to do so here.”). The R&R properly relied on these cases as  
15 persuasive authority to conclude that Jackson has not established Eighth Amendment  
16 claim.

17 The Court having considered the R&R, Plaintiff's objections, and the remaining  
18 record, does hereby find and order as follows:

- 19 (1) The R&R is **ADOPTED**;
- 20 (2) Defendants' motion for summary judgment is **GRANTED**, and Plaintiff's  
21 claims are dismissed with prejudice;
- 22 (3) Jackson's *in forma pauperis* status is **REVOKED** for purposes of appeal;

1 (4) The Clerk is directed to send copies of this Order to Plaintiff, counsel for  
2 Defendants, and to the Hon. David W. Christel; and

3 (5) The Clerk shall enter a JUDGMENT and close the case.

4 Dated this 24th day of May, 2021.

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7 BENJAMIN H. SETTLE  
United States District Judge  
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